



Billing Code 3410-05-P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1437

[Docket No. CCC-2019-0005]

RIN 0560-AI48

Noninsured Crop Disaster Assistance Program

AGENCY: Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This rule implements changes to the Noninsured Crop Disaster Assistance Program (NAP) as required by the Agriculture Improvement Act of 2018 (the 2018 Farm Bill). The rule makes buy-up coverage levels available for 2019 and future years, increases service fees, and extends the service fee waiver and premium reduction to eligible veterans. The rule includes the changes to the payment limitation and native sod provisions and clarifies when NAP coverage is available for crops when certain crop insurance is available under the Federal Crop Insurance Act. This rule is adding provisions for eligibility and program requirements for new producers or producers with less than 1-year growing experience with a new crop (for example, most hemp producers). This rule also makes some additional minor changes to clarify existing NAP requirements and improve program integrity.

DATES: *Effective:* [Insert date of publication in the *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Tona Huggins, (202) 720-7641; Tona.Huggins@usda.gov. Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720-2600 (voice).

SUPPLEMENTARY INFORMATION:

Background

NAP provides financial assistance to producers of noninsurable crops to protect against natural disasters that result in crop losses or prevent crop planting. FSA administers NAP for the Commodity Credit Corporation (CCC) as authorized by section 196 of the Federal Agriculture Improvement and Reform Act of 1996, as amended (7 U.S.C. 7333). NAP is administered under the general supervision of the FSA Administrator and is carried out by FSA State and county committees.

NAP is available for crops for which catastrophic risk protection and additional coverage under the Federal Crop Insurance Act (7 U.S.C. 1508(b) and (c), and (h)) are not available or, if such coverage is available, it is only available under a policy that is in a “pilot” program category, provides coverage for specific intervals based on weather indexes or under a whole farm plan of insurance. The eligibility for NAP coverage is limited to:

- Crops other than livestock that are commercially produced for food and fiber, and
- Other specific crops including floricultural, ornamental nursery, and Christmas tree crops, turfgrass sod, seed crops, aquaculture (including ornamental fish), sea grass and sea oats, camelina, sweet sorghum, biomass sorghum, and industrial crops (including those grown expressly

for the purpose of producing a feedstock for renewable biofuel, renewable electricity, or biobased products).

Qualifying losses to eligible NAP crops must be due to an eligible cause of loss as specified in 7 CFR part 1437, which includes damaging weather (drought, hurricane, freeze, etc.) or adverse natural occurrence (volcanic eruption, flood, etc.). In order to be eligible for a NAP payment, producers must first apply for NAP coverage and submit the required NAP service fee or service fee waiver to their FSA county office by the application closing date for their crop. The NAP application for coverage must be completed, including submission of the service fee or a service fee waiver, before NAP coverage can begin. Losses occurring outside a coverage period are not eligible for NAP assistance. Producers who choose not to obtain NAP coverage for a crop are not eligible for NAP assistance for the crop. This rule does not change the core provisions of NAP.

The 2018 Farm Bill (Pub. L. 115-334) made several changes to NAP. This rule amends the NAP regulations to be consistent with those changes. The mandatory changes make “buy-up” coverage available for 2019 and later crop years, allowing producers to buy additional NAP coverage for a premium, resulting in a risk management product that has equivalent coverage levels to some types of crop insurance offered by the Risk Management Agency (RMA). This rule also implements the 2018 Farm Bill’s provisions regarding payment limitation, increased service fees, a service fee waiver and a premium reduction for eligible veterans, the beginning of the coverage period, benefit restrictions for crops grown on native sod acreage, and the availability of NAP coverage for crops for which crop insurance is available under the Federal Crop Insurance Act.

This rule also makes some additional minor changes to clarify existing NAP requirements and improve program integrity.

Eligibility of Crops Not Covered by Federal Crop Insurance

This rule implements changes required by the 2018 Farm Bill with regard to NAP crop eligibility. The 2018 Farm Bill specifies that NAP is available for crops for which catastrophic risk protection is not available under section 508(b) of the Federal Crop Insurance Act and additional coverage under subsections 508(c) and 508(h) is not available or, if such coverage is available, it is only available under a policy that is in a “pilot” program category, provides coverage for specific intervals based on weather indexes or under a whole farm plan of insurance. This rule amends provisions at §§ 1437.1 and 1437.4 to be consistent with the 2018 Farm Bill.

Buy-up Coverage Levels and Premiums

Prior to the 2014 Farm Bill, NAP provided only catastrophic coverage (basic 50/55 coverage), which is based on the amount of loss that exceeds 50 percent of expected production at 55 percent of the average market price for the crop. The 2014 Farm Bill changes authorized additional higher levels of coverage (“buy-up” coverage) ranging from 50 to 65 percent of production, in 5 percent increments, at 100 percent of the average market price. However, that buy-up coverage was only available for 2015 through 2018. The 2018 Farm Bill makes buy-up coverage available for 2019 and future crop years. This rule amends § 1437.5 to remove the reference to 2015 through 2018 program years to be consistent with the 2018 Farm Bill. As under the 2014 Farm Bill, crops and grasses intended for grazing are specifically excluded from buy-up coverage.

To obtain buy-up coverage, producers are required to pay a premium, equal to 5.25 percent times the level of coverage, in addition to the NAP service fee. The 50 percent premium reduction for beginning, limited resource, and socially disadvantaged farmers or ranchers specified in the regulation continues to apply for 2019 and future years. The 2018 Farm Bill and this rule also extend the premium reduction to eligible veteran farmer or ranchers as defined in 7 CFR § 718.2. To qualify for the waiver, a veteran must have either been farming for 10 years or less or achieved veteran status in the past 10 years.

Because the application closing dates for all 2019 crops and some 2020 crops passed prior to the announcement of 2018 Farm Bill provisions that authorized the availability of buy-up NAP coverage, FSA allowed producers of those crops to retroactively obtain buy-up coverage for 2019 and 2020. On April 8, 2019, FSA announced an extended application period for buy-up coverage for those crops through a press release and extensive outreach efforts. Producers were required to submit an application for coverage requesting buy-up coverage and pay the applicable service fee by May 24, 2019. Basic 50/55 coverage was not affected by the 2018 Farm Bill and was available prior to the application closing dates; therefore, the application closing dates for basic 50/55 coverage were not extended.

Service Fees

This rule amends the NAP service fees in § 1437.7 as required by the 2018 Farm Bill. The service fee has increased from \$250 to \$325 per crop, from \$750 to \$825 maximum per producer per county, and from \$1,875 to \$1,950 maximum per producer

for all counties. FSA implemented the service fee increase administratively on April 8, 2019.

Prior to this rule, the NAP service fee was waived for beginning, limited resource, and socially disadvantaged farmers. That waiver continues to apply for those groups for 2019 and future years, and is also made available to eligible veteran farmers as defined in 7 CFR 718.2.

Payment and Income Limitation

The 2018 Farm Bill establishes payment and income limitations that apply to 2018 and subsequent crop, program, or fiscal year benefits. FSA is implementing the payment and income limitations through a separate final rule to be published in the *Federal Register*. The payment and income limitations are specified in 7 CFR part 1400.

The 2018 Farm Bill established separate payment limitations for NAP assistance. The total NAP payment amount for all crops with basic 50/55 coverage is limited to \$125,000 per person or legal entity, directly or indirectly. The total NAP payment amount for all crops with buy-up coverage is limited to \$300,000 per person or legal entity, directly or indirectly. A producer may elect different coverage levels for different crops; therefore, both payment limitations may apply to the same person or legal entity. For example, a person or legal entity that is a producer may elect basic 50/55 coverage for green peppers, a buy-up coverage level of 55/100 for cantaloupe, and a buy-up coverage level of 65/100 for tomatoes. In that case, the producer could receive an annual per person or legal entity payment of up to \$125,000 for eligible losses to green peppers, and a total payment of up to \$300,000 for eligible losses to cantaloupe and tomatoes.

Attribution of payments specified in 7 CFR part 1400 applies in administering the payment limitation. The average adjusted gross income (AGI) limit for most FSA and CCC programs, including NAP, is \$900,000.

Native Sod

The 2014 Farm Bill introduced native sod provisions that required increased NAP service fees and premiums and also reduced the actual production history and only applied, per the 2014 Farm Bill, to certain producers in Iowa, Minnesota, Montana, Nebraska, North Dakota, and South Dakota. The 2014 Farm Bill applied those provisions to native sod tilled for production of annual crops after February 7, 2014, in any year in the first 4 years of cropping. The 2018 Farm Bill continues the previous policy under the 2014 Farm Bill for native sod tilled for annual crop production from February 7, 2014, through December 20, 2018. It also applies the provisions to native sod tilled for production of any crop enrolled in NAP after December 20, 2018, for no more than 4 years during the first 10 years of cropping. As under the 2014 Farm Bill, the NAP service fee and premiums for crops planted on acreage subject to these provisions will be 200 percent of the amount calculated according to § 1437.7, with the premium not to exceed the maximum amount of 5.25 percent times the payment limitation. This rule also amends the definition of native sod to be consistent with the new provisions. The 2018 Farm Bill does not change the de minimis acreage exemption, which applies to areas of 5 acres or less, meaning that for these areas are exempt from the native sod provision.

Coverage Period

Prior to the 2018 Farm Bill, the NAP coverage period could not begin earlier than 30 days after a producer filed a NAP application for coverage. The 2018 Farm Bill changed this requirement to specify that the application for coverage must be filed “by an appropriate deadline before the beginning of the coverage period, as determined by the Secretary.” This rule amends § 1437.6 to specify that a coverage period could now begin as soon as one calendar day after an application for coverage is filed, provided that the NAP-covered crop has an otherwise defined coverage period that would ordinarily accommodate that start date. This rule also specifies that the coverage period for honey will begin the later of one calendar day after the date the application for coverage is filed, one calendar day after the application closing date, or the date the colonies are set in place for honey production.

Hemp Eligibility

The 2018 Farm Bill defines “hemp” as the plant species *Cannabis sativa L.* and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol (THC) concentration of not more than 0.3 percent on a dry weight basis. The 2018 Farm Bill allows commercial hemp production if the crop is grown in compliance with a State, Tribal, or federal plan. Beginning with the 2020 crop year, hemp will be considered an eligible crop under NAP similar other NAP crops for which catastrophic risk protection and additional coverage under the Federal Crop Insurance Act (7 U.S.C. 1508(b) and (c), and (h)) are not available or, if such coverage is available, it is only available under a policy that provides coverage for specific intervals

based on weather indexes or under a whole farm plan of insurance. This rule adds a new section containing hemp eligibility and program requirements at § 1437.108 and defines “hemp,” “hemp processor,” “hemp processor contract,” and “THC” in § 1437.3.

NAP only offers coverage to eligible hemp, which must be grown under a Federal, State, or Tribal plan. Those plans require a license. Therefore, to be eligible for NAP coverage, the hemp must be grown under an official certification or license issued by the applicable governing authority, the producer must have a hemp processor contract for the crop by the acreage reporting date, and the crop must be planted for harvest as hemp in accordance with that contract. If a producer is also a hemp processor, a corporate resolution including an adoption of the terms specified in this rule for a hemp processor contract by the Board of Directors or officers will be considered a hemp processor contract.

Hemp producers must provide the certification or license number and a copy of the certificate or license, and copies of all hemp processor contracts by the acreage reporting date. As for all crops, one of the NAP eligibility requirements is proof of marketability. To be marketed, hemp must be processed. Therefore, proof of marketability of the hemp crop is shown by the contract the producer has with a hemp processor. Hemp is not eligible for NAP benefits if the crop has a THC level above 0.3 percent; therefore, producers must also submit copies of THC test results taken at harvest, which are required under applicable State, Tribal, and federal plans. Due to the risk of transmission of crop diseases that do not have adequate treatment options for hemp, hemp is not eligible for NAP if it is grown on acres on which Cannabis, canola, dry beans, dry peas, mustard, rapeseed, soybeans in certain states specified by FSA, or sunflowers were

grown the preceding crop year. Hemp is not eligible for NAP benefits if the producer's certification or license is terminated or suspended during the crop year.

Growing History Requirement for Buy-up Coverage

FSA is making an additional change to § 1437.5 to limit buy-up coverage to crops with at least one year of successful growing history. The 2018 Farm Bill re-authorized buy-up NAP coverage and at the same time increased the payment limitation for crops with buy-up coverage levels from \$125,000 to \$300,000 per crop year. Therefore, and consistent with how some crop insurance products are first made available to producers of new crops, to safeguard against potential program abuse and ensure that the higher level of coverage and increased payment limitation is only made available to those who have at least demonstrated an ability to produce the crop successfully absent disaster, FSA is making this change. Such ability is reflected in their previous successful production of the crop. Accordingly, the producer must have successfully produced the crop in a prior crop year in order to be eligible to purchase buy-up NAP coverage for that crop. Production of a crop is "successful" if there is some documented record that proves that the producer was able to produce at least 50 percent of the county expected yield of the crop in the county in a prior crop year, unless the producer's crop suffered a loss due to an eligible cause of loss in § 1437.10.

Additional Changes

In addition to the changes required by the 2018 Farm Bill, this rule makes several additional changes to improve program integrity and clarify NAP requirements.

FSA is making changes to specify that lightning is an eligible cause of loss and wildfire is an eligible related condition when it occurs with an eligible cause of loss listed

in § 1437.10(b)(1) or (2). It also specifies that failure to harvest and market a crop due to lack of a sufficient plan for harvesting and marketing given the kind of crop, amount of crop, and time that all production may be mature and ready for harvest, the perishability of the crop, and the means or the resources to carry out that plan is an ineligible cause of loss. These changes to eligible and ineligible causes of loss are intended to clarify existing policy and do not change how FSA administers NAP.

This rule clarifies in § 1437.7 that the premium for buy-up coverage for value loss crops will be based on the lesser of the maximum dollar value for which a producer requests coverage, subject to the applicable payment limitation, times the coverage level, times the 5.25 percent premium. This change corrects the regulation to conform to the statute and current NAP policy. It removes duplicate provisions for the premium calculation for value loss crops in § 1437.301.

Throughout this rule, FSA is clarifying that the certain requirements specific to hand-harvested crops that require notification of damage or loss within 72 hours of the date damage or loss first becomes apparent will as well as certain appraisal requirements will also apply to rapidly deteriorating crops. Because hand-harvested crops are typically also crops that deteriorate quickly in the field, this change does not substantially alter the crops subject to these requirements. This rule amends § 1437.11 to require that for hand-harvested or rapidly deteriorating crops, a producer must request an appraisal and release of unharvested acreage within 72 hours after the acreage is abandoned. This change is needed in order for FSA to obtain an accurate appraisal of potential production before the crop begins to deteriorate. This rule does not change the current provision for crops that are not hand-harvested or rapidly deteriorating, which requires the producer to request an

appraisal within 15 calendar days. This rule corrects § 1437.11 to apply the requirement for filing a notice of loss to producers of value loss crops, in addition to producers of yield-based crops. This correction is needed to ensure that all crop losses are timely reported and FSA has adequate time to ensure that an appraisal is completed.

For clarity, this rule also adds a definition of “abandoned” in § 1437.3, which is consistent with how FSA has previously interpreted this term.

This rule adds provisions to § 1437.7 to specify when an acreage report must be filed. These requirements reflect current NAP policy.

This rule adds provisions to § 1437.8 to require producers to provide acceptable evidence of their risk in the crop and ability and intent to harvest, transport, and market their expected production determined based on the approved yield of the crop, or their inventory for value loss crops. Acceptable evidence includes documentation such as receipts for seed and fertilizer and contracts for harvest labor or transport of the crop. FSA is making this clarifying change to be consistent with the intent of NAP, which is to provide assistance to producers who have a legitimate risk in their crops based on what they would have reasonably been expected to successfully produce and market.

This rule amends § 1437.12 to specify that FSA will establish the average market price for a crop by obtaining market prices for the 5 consecutive crop years beginning with the most recent year for which price data is available. This change is consistent with current implementation of NAP and is intended to provide flexibility when price data for a crop is unavailable for the immediately preceding crop year.

Under § 1437.16, when a producer has adopted a scheme or device or made fraudulent misrepresentations or misrepresented facts to FSA, that producer must refund

a NAP payment with interest and other amounts as determined appropriate to the circumstances by FSA. This rule amends those provisions to specify that FSA may assess liquidated damages of 10 percent of an expected NAP payment in those situations.

FSA has become aware that there are locations for which there are no independent assessors or assessments available from which collective loss determinations can be made for the geographical area. Therefore, to provide flexibility when two independent assessments of grazed forage acreage conditions cannot be obtained, this rule clarifies in § 1437.401 that when there is no similar mechanically harvested forage acreage on a farm or similar farms in the area and no independent assessments, FSA may use alternative methods for establishing the collective percentage of loss as, determined by the Deputy Administrator. Additionally, FSA is amending § 1437.401 to specify that if a NAP-covered producer seeks a NAP payment for forage crop acreage intended for grazing determined based on the collective percentage of loss, the producer is only required to file an application for payment. A notice of loss will not be required unless the NAP-covered producer wants a NAP payment determined based on the NAP-covered producer's unit production similar to any other NAP-covered crop.

This rule removes provisions in § 1437.503 that made prevented planting coverage available in Hawaii, Puerto Rico, and other tropical areas approved by the Deputy Administrator for Farm Programs. Common program provisions in § 718.103(a) provide that in order to be eligible for coverage for prevented planting, an eligible cause of loss must have occurred before the final planting date for the crop or, in the case of multiple plantings, the harvest date of the first planting in the applicable planting period. Multiple planting periods and final planting dates are not applicable to covered tropical

crops; therefore, tropical crops cannot be eligible for prevented planting coverage. This rule also amends § 1437.502 to refer to the maximum service fee per crop per administrative county provided in § 1437.7.

This rule also specifies that the regulation is applicable to the 2019 and subsequent crop years, and makes minor technical corrections to § 1437.5.

Streamlining Reporting and Premium Prices

The 2018 Farm Bill directed FSA to establish a streamlined process for the submission of records and acreage reports for diverse production systems, such as those typical of urban production systems, other small-scale production systems, and direct-to-consumer production systems. FSA is currently reviewing its existing policies to determine how the process can be simplified while continuing to meet all other statutory requirements. Any changes made will be announced in separate rulemaking.

The 2018 Farm Bill also amended the payment provisions for crops with buy-up coverage levels to specify that payments will be based on “the average market price, contract price, or other premium price (such as a local, organic, or direct market price, as elected by the producer).” The average market price has been typically established on a state-by-state basis, meaning that all NAP payments for a crop and, if applicable, for an intended use within a state would be based on the same average market price. Average market prices are based on the best available data (including National Agricultural Statistics Service (NASS) data, National Institute of Food and Agriculture (NIFA) data, knowledge of local markets, etc.) and are comparable (though not required to be equal) to established Federal Crop Insurance Corporation (FCIC) prices.

Beginning with the 2015 crop year, FSA had the ability to establish separate average market prices within a State that more closely reflected the prices obtained by producers based on specific situations, such as the use of different farming practices (conventional or organic) and sales to different markets (such as direct sales to consumers at farm stands or farmer's markets). An organic price option is currently available for crops regardless of whether they have basic 50/55 NAP coverage or buy-up NAP coverage, and a direct market option is currently available for crops with buy-up coverage. FSA currently offers a contract marketing percentage option for producers with buy-up coverage, which results in a payment based on an established average market price for fresh and processed intended uses. This is based on a producer's contracted uses of the crop for that crop year, but does not use a producer's individual contract price to calculate a NAP payment.

Effective Date, Notice and Comment, and Paperwork Reduction Act

As specified in 7 U.S.C. 9091, the regulations to implement the provisions of Title I and the administration of Title I of the 2018 Farm Bill are:

- Exempt from the notice and comment provisions of 5 U.S.C. 553,
- Exempt from the Paperwork Reduction Act (44 U.S.C. chapter 35), and
- To use the authority in 5 U.S.C. 808 related to Congressional review and any potential delay in the effective date.

The APA provides that the 30-day delay in the effective date and notice and comment provisions do not apply when the rule involves specified actions, including matters relating to benefits. This rule governs NAP payments and therefore falls within that exemption.

The authority provided in 5 U.S.C. 808 provides that when an agency finds for good cause that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, that the rule may take effect at such time as the agency determines. Due to the nature of the rule, the mandatory requirements of the 2018 Farm Bill, and the need to implement the regulations expeditiously to provide assistance to producers, FSA and CCC find that notice and public procedure are contrary to the public interest.

The Office of Management and Budget (OMB) designated this rule as not major under the Congressional Review Act, as defined by 5 U.S.C. 804(2). Therefore, FSA is not required to delay the effective date for 60 days from the date of publication to allow for Congressional review.

Accordingly, this rule is effective upon publication in the *Federal Register*.

Executive Orders 12866, 13563, 13771 and 13777

Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review,” direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity).

Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The requirements in Executive Orders 12866 and 13573 for the analysis of costs and benefits to loans apply to rules that are determined to be significant. Executive Order 13777, “Enforcing the Regulatory Reform Agenda,” established a federal policy to alleviate unnecessary regulatory burdens on the American people.

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866, “Regulatory Planning and Review,” and therefore, OMB has not reviewed this rule and an analysis of costs and benefits to loans is not required under either Executives Orders 12866 or 13563.

Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs,” requires that in order to manage the private costs required to comply with Federal regulations that for every new significant or economically significant regulation issued, the new costs must be offset by the elimination of at least two prior regulations. As this rule is designated not significant, it is not subject to Executive Order 13771. In general response to the requirements of Executive Order 13777, USDA created a Regulatory Reform Task Forces, and USDA agencies were directed to remove barriers, reduce burdens, and provide better customer service both as part of the regulatory reform of existing regulations and as an on-going approach. FSA reviewed this regulations and made changes to improve any provision that was determined to be outdated, unnecessary, or ineffective.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601-612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare a regulatory analysis of any rule whenever an agency is required by APA or any other law to publish a proposed rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to the Regulatory Flexibility Act because as noted above, this rule

is exempt from notice and comment rulemaking requirements of the APA and no other law requires that a proposed rule be published for this rulemaking initiative.

Environmental Review

In general, the environmental impacts of rules are to be considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321-4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500-1508), and FSA regulations for compliance with NEPA (7 CFR part 799). Some of the changes being made in the rule were self-enacting and have already been implemented administratively. FSA has determined that participation in programs similar to those found in 7 CFR 1437 will not significantly affect the quality of the human environment (7 CFR part 799.9(d)). In addition, most of these changes are mandatory with limited or no discretionary decisions regarding implementation. Therefore, they are not subject to review under NEPA.

Additional changes will not have a significant impact on the quality of the human environment either individually or cumulatively. The environmental responsibilities for each prospective farmers will not change from the current process followed for all farm program actions. Therefore, FSA will not prepare an environmental assessment or environmental impact statement on this rule.

The changes proposed include clarifications regarding eligible losses and causes of loss (types of natural disasters). FSA has likewise determined that these efforts do not constitute major Federal actions that would significantly affect the quality of the human environment, individually or cumulatively, because of their context and the anticipated intensity of impacts.

Executive Order 12372

Executive Order 12372, “Intergovernmental Review of Federal Programs,” requires consultation with State and local officials that would be directly affected by proposed Federal financial assistance. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance and direct Federal development. For reasons specified in the final rule related notice regarding 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities in this rule are excluded from the scope of Executive Order 12372.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, “Civil Justice Reform.” This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. This rule does not have retroactive effect. Before any judicial actions may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR parts 11 and 780 are to be exhausted.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, “Federalism.” The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government, except as required by law. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

FSA has assessed the impact of this rule on Indian Tribes and determined that this rule has Tribal implications that require Tribal consultation under Executive Order 13175. Tribal consultation for this rule was included in the 2018 Farm Bill consultation held on May 1, 2019, at the National Museum of American Indian, in Washington DC. USDA Under Secretary for the Farm Production and Conservation mission area, as part of Title I session. There were no specific comments from Tribes on this rule during Tribal consultation. If a Tribe requests additional consultation, FSA will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications identified in this rule are not expressly mandated by law.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104-4) requires Federal agencies to assess the effects of their regulatory actions of State, local, and Tribal governments or the private sector. Agencies generally must prepare a written

statement, including cost benefits analysis, for proposed and final rules with Federal mandates that may result in expenditures of \$100 million or more in any 1 year for State, local or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of UMRA, for State, local and Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Federal Assistance Programs

The title and number of the Federal Assistance Program found in the Catalog of Federal Domestic Assistance, to which this rule applies, is:

10.451 – Noninsured Assistance.

E-Government Act Compliance

FSA is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects

7 CFR part 1437

Acreage allotments, Agricultural commodities, Crop insurance, Disaster assistance, Fraud, Penalties, Reporting and recordkeeping requirements.

For the reasons as stated in the preamble, CCC amends 7 CFR part 1437 as follows:

PART 1437 – NONINSURED CROP DISASTER ASSISTANCE PROGRAM

1. The authority citation for part 1437 continues to read as follows:

Authority: 7 U.S.C. 1501–1508 and 7333; 15 U.S.C. 714–714m; 19 U.S.C. 2497, and 48 U.S.C. 1469a.

Subpart A—General Provisions

2. Amend § 1437.1 as follows:

- a. Revise paragraph (b); and
- b. In paragraph (c), remove “2015” and add “2019” in its place.

The revision reads as follows:

§ 1437.1 Applicability.

* * * * *

(b) The provisions in this part are applicable to eligible producers and eligible crops for which catastrophic risk protection is not available under subsection (b) of section 508 of the Federal Crop Insurance Act (7 U.S.C. 1508) and additional coverage under subsections (c) and (h) of section 508 or, if coverage is available, it is only available under a policy that provides coverage for specific intervals based on weather indexes or under a whole farm plan of insurance.

* * * * *

3. Amend § 1437.3 as follows:

- a. Add the definitions of “Abandoned”, “Hemp”, “Hemp processor”, “Hemp processor contract”, and “THC” in alphabetical order; and

- b. In the definition of “Native sod”, remove the words “for the production of an annual crop through February 7, 2014”.

The additions read as follows:

§ 1437.3 Definitions.

* * * *

Abandoned means to have discontinued care for a crop or provided care so insignificant as to provide no benefit to the crop, or failed to harvest in a timely manner.

* * * *

Hemp means the plant *Cannabis sativa L.* and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a THC concentration of not more than 0.3 percent on a dry weight basis.

Hemp processor means any business enterprise regularly engaged in processing hemp that possesses all licenses and permits for processing hemp required by the applicable state or Federal governing authority, and that possesses facilities, or has contractual access to such facilities with enough equipment to accept and process contracted hemp within a reasonable amount of time after harvest.

Hemp processor contract means a legal written agreement executed between the producer and hemp processor engaged in the production and processing of hemp containing at a minimum:

- (1) The producer's promise to plant and grow hemp and to deliver all hemp to the hemp processor;
- (2) The hemp processor's promise to purchase the hemp produced by the producer; and
- (3) A base contract price, or method to derive a value that will be paid to the producer for the production as specified in the processor's contract.

(4) For a producer who is also a hemp processor, a corporate resolution by the Board of Directors or officers of the hemp processor will be considered a hemp processor contract if it contains the required terms listed in this definition.

* * * * *

THC means delta-9 tetrahydrocannabinol.

* * * * *

4. Amend § 1437.4 as follows:

- a. Revise paragraph (a)(4)(i);
- b. Remove paragraph (a)(4)(ii);
- c. Redesignate paragraphs (a)(4)(iii) and (a)(4)(iv) as (a)(4)(ii) and (a)(4)(iii),

respectively;

- d. Revise paragraph (c);
- e. Redesignate paragraphs (d) and (e) as (e) and (f), respectively;
- f. Add new paragraph (d); and
- g. In newly redesignated paragraph (e), remove “paragraph (c)” and add

“paragraph (d)” in its place.

The revisions and addition read as follows.

§1437.4 Eligibility.

(a) * * *

(4) * * *

(i) Catastrophic risk protection and additional coverage under the Federal Crop Insurance Act (7 U.S.C. 1508(b), (c), and (h)) are not available or, if coverage is

available, it is only available under a policy that provides coverage for specific intervals based on weather indexes or under a whole farm plan of insurance; or

* * * * *

(c) Except as specified in paragraph (e) of this section, paragraph (d) of this section will apply to native sod acreage in Iowa, Minnesota, Montana, Nebraska, North Dakota, and South Dakota that has been tilled:

(1) During the first 4 crop years of planting for native sod acreage that has been tilled for the production of an annual crop during the period beginning on February 8, 2014, and ending on December 20, 2018; and

(2) For not more than any 4 crop years for native sod acreage that has been tilled for the production of any crop after December 20, 2018:

(i) During the first 10 crop years after the initial tillage; and

(ii) For which a NAP applicant must submit a service fee or NAP premium for a crop on that acreage.

(d) For acreage specified in paragraph (c) of this section:

(1) The approved yield will be determined by using a yield equal to 65 percent of the producer's T-yield for the annually planted crop; and

(2) The service fee or premium for the annual covered crop planted on native sod will be equal to 200 percent of the amount determined in § 1437.7, as applicable, but the premium will not exceed the maximum amount specified in § 1437.7(d)(2).

* * * * *

5. Amend § 1437.5 as follows:

a. In paragraph (d) introductory text, remove the words “For 2015 through 2018 crop years, producers” and add the words “Subject to paragraph (e) of this section, producers” in their place; and

b. In paragraph (d)(1), remove the word “your” and add the word “the” in its place;

c. Redesignate paragraphs (e) and (f) as paragraphs (f) and (g), respectively;

d. Add new paragraph (e).

The addition reads as follows:

§ 1437.5 Coverage levels.

* * * * *

(e) A producer cannot obtain buy-up coverage for a crop if the producer has not successfully produced the crop in a previous year for which documentation exists and that documentation shows that the crop can be successfully grown by the producer in the county. Production of the crop is considered to be successful if the producer produced at least 50 percent of the county expected yield for the same county for which buy-up coverage is sought, unless the producer suffered a loss on the crop due to an eligible cause of loss in § 1437.10. If not already provided to FSA for any reason including NAP coverage or assistance, the producer must submit documentation showing successful growing of the crop in a previous year and, in the event a loss due to an eligible cause of loss was sustained, submit documentation of that loss satisfying the requirements of §1437.11.

* * * * *

6. Amend § 1437.6 as follows:

- a. In paragraph (a) introductory text, remove the phrase “30 days” and add the phrase “1 calendar day” in its place;
- b. In paragraph (a)(2), remove the phrase “30 days” and add the phrase “30 calendar days” in its place;
- c. In paragraphs (b)(1)(i), (c), and (d), remove the phrase “30 calendar days” each time it appears and add the phrase “1 calendar day” in its place;
- d. Revise paragraph (e);
- e. In paragraph (f), remove the phrase “30 calendar days” and add the phrase “1 calendar day” in its place both times it appears;
- f. In paragraph (g), remove the phrase “30 calendar days” and add the phrase “1 calendar day” in its place, and remove the phrase “30 days” and add the phrase “1 calendar day” in its place; and
- g. Revise paragraph (h).

The revisions read as follows:

§ 1437.6 Coverage period.

* * * * *

(e) *Honey*. Except as provided in paragraph (h) of this section, the coverage period for honey begins the later of 1 calendar day after the date of the application for coverage is filed; 1 calendar day after the application closing date; or the date the colonies are set in place for honey production. The coverage ends the last day of the crop year.

* * * * *

(h) *2019 and 2020 crop years.* For the 2019 and 2020 crop years only, if a crop's application closing date is before April 8, 2019, the coverage period of the crop will be as specified in paragraphs (a) through (g) of this section except that the date coverage begins will be retroactive as long as the application for coverage is filed by the application closing date as specified in §1437.7(i). This limited retroactive coverage for the 2019 and 2020 crop years only will begin 1 calendar day after the established application closing date, which would be the same as if they had filed by the deadlines as specified in paragraphs (a) through (g) of this section.

7. Amend § 1437.7 as follows:

a. Revise the section heading and paragraphs (b) and (e);

b. In paragraph (g), remove the words “and socially” and add the word “socially” in their place, and remove the words “ranchers will” and add the words “ranchers, and veteran farmers and ranchers will” in their place;

c. Revise paragraph (i); and

d. Add paragraphs (j), (k), and (l).

The revisions and additions read as follows:

§ 1437.7 Application for coverage, service fee, premium, transfers of coverage, and acreage report.

* * * * *

(b) The service fee or request for service fee waiver specified in paragraph (g) of this section must accompany the application for coverage in order for it to be considered filed. The service fee is:

(1) For applications filed by April 7, 2019, \$250 per crop per administrative county, up to \$750 per producer per administrative county, not to exceed \$1,875 per producer; and

(2) For applications filed on or after April 8, 2019, \$325 per crop per administrative county, up to \$825 per producer per administrative county, not to exceed \$1,950 per producer.

* * * * *

(e) For value loss crops, premiums will be equal to the lesser of:

(1) The product obtained by multiplying:

(i) A 5.25-percent premium fee; and

(ii) The applicable payment limit; or

(2) The sum of the premiums for each eligible crop, with the premium for each eligible crop obtained by multiplying:

(i) The maximum dollar value for which coverage is sought by the applicant;

(ii) The coverage level elected by the producer; and

(iii) A 5.25-percent premium fee.

* * * * *

(i) For the 2019 and 2020 crop years, if a crop's application closing date is before April 8, 2019, FSA will accept applications for coverage without regard to whether or not the application for coverage was filed by the crop's application closing date, provided that the application for coverage includes buy-up coverage according to §1437.5(d) and is filed by May 24, 2019. Except as specifically stated in this rule, the provisions of this paragraph do not apply to crops having an application closing date established on or after

April 8, 2019, or to applications for coverage that do not include buy-up coverage as an option selected by the applicant. The coverage period for applications for coverage filed according to this paragraph will be as specified in §1437.6.

(j) An accurate acreage report must be filed for each crop included on an application for coverage by the earliest of:

(1) The acreage reporting date for the crop announced by FSA;

(2) 15 calendar days before the onset of harvest or grazing of the crop acreage being reported; or

(3) The established normal harvest date for the end of the coverage period.

(k) Applications for coverage for hemp are governed by this part.

(l) Applications for coverage that were filed with FSA for all crops other than hemp that were covered under the regulations in effect at the time of filing and which meet all the other requirements of this section will be recognized by FSA.

8. Amend §1437.8 as follows:

a. In paragraph (a) introductory text, remove the words “records of crop acreage” and add the words “accurate records of crop acreage” in their place and revise the last sentence.

b. In paragraph (b)(1), remove the words “crops must” and add the words “or rapidly deteriorating crops, as determined by the Deputy Administrator, must” in their place, and remove the words “hand-harvested crop acreage” and add the words “acreage of hand-harvested or rapidly deteriorating crops” in their place;

c. In paragraph (c)(1), remove the word “and”;

d. In paragraph (c)(2), remove the period at the end of the paragraph and add a semicolon in its place; and

e. Add paragraphs (c)(3) and (c)(4).

The revision and additions read as follows:

§ 1437.8 Records.

(a)*** A certification of an amount of production itself is not a record of production.

Certifications must be accompanied by a record of production; records of production” in their place;

* * * * *

(c) * * *

(3) The producer’s risk in the crop; and

(4) The producer’s ability and intent to harvest, transport, and market the crop’s expected production determined by using the approved yield or inventory of the crop or commodity.

* * * * *

9. Amend § 1437.10 as follows:

a. Redesignate paragraphs (b)(1)(viii) and (b)(1)(ix) as paragraphs (b)(1)(ix) and (b)(1)(x), respectively;

b. Add new paragraph (b)(1)(viii);

c. In newly redesignated paragraph (b)(1)(ix), remove the cross reference “(viii)” and add the reference “(ix)” in its place;

d. In paragraph (b)(3)(iv), remove the word “or”;

e. Redesignate paragraph (b)(3)(v) as paragraph (b)(3)(vi);

- f. Add new paragraph (b)(3)(v);
- g. In paragraph (d)(15), remove the words “practices; or” and add the word “practices;” in their place;
- h. In paragraph (d)(16), remove the “.” and add “; or” in its place; and
- i. Add paragraph (d)(17).

The additions read as follows:

§ 1437.10 Causes of loss.

* * * * *

(b) * * *

(1) * * *

(viii) Lightning;

* * * * *

(3) * * *

(v) Wildfire; or

* * * * *

(d) * * *

(17) Failure to harvest or market the crop due to lack of a sufficient plan or resources.

* * * * *

10. Amend § 1437.11 as follows:

- a. In paragraph (a) and paragraph (b) introductory text, remove the word “hand-harvested” and add the words “hand-harvested or rapidly deteriorating” both times they appear;

b. In paragraph (b)(2), remove the word “claims” add the words “claims and value loss claims” in its place; and

c. Revise paragraph (d)(2)(ii).

The revision reads as follows:

§ 1437.11 Notice of loss, appraisal requirements, and application for payment.

* * * * *

(d) * * *

(2) * * *

(ii) Within 72 hours after the acreage is abandoned for hand-harvested or rapidly deteriorating crops, or within 15 calendar days after the acreage is abandoned for all other crops;

* * * * *

§ 1437.12 [Amended]

11. Amend § 1437.12 as follows:

a. In paragraph (b)(1), remove the words “immediately preceding the crop year of coverage, if available” and add the words “beginning with the most recent year for which price data is available” in their place; and

b. In paragraph (b)(4), remove the words “immediately preceding the previous crop year” and add the words “beginning with the most recent year for which price data is available” in their place.

12. In § 1437.16, amend paragraph (d) by adding two sentences to the end of the paragraph to read as follows:

§1437.16 Miscellaneous provisions.

(d)***

FSA may assess liquidated damages of 10 percent of the projected or received NAP payment for the crop or commodity in violation. Liquidated damages are in addition to any refund of program benefits and are not considered a penalty.

Subpart B—Determining Yield Coverage Using Actual Production History

13. Add § 1437.108 to read as follows.

§ 1437.108 Hemp.

(a) Hemp is eligible for NAP coverage only if the hemp is:

(1) Grown under an official certification or license issued by the applicable governing authority that permits the production of the hemp;

(2) Grown under a hemp processor contract executed by the applicable acreage reporting date; and

(3) Planted for harvest as hemp in accordance with the requirements of the hemp processor contract and the production management practices of the hemp processor.

(b) In addition to all other requirements under this part, a producer who obtains NAP coverage for hemp must submit by the acreage reporting date:

(1) The certification or license number;

(2) A copy of the certification form or official license issued by the applicable governing authority authorizing the producer to produce hemp; and

(3) A copy of each fully executed hemp processor contract.

(c) A producer must submit THC test results taken at harvest of the hemp crop. If the producer does not submit the THC test results, that production will not be included in the producer's actual yield for the purpose of determining a producer's APH under § 1437.101.

(d) Hemp is not eligible for NAP coverage if it is planted on acres on which Cannabis, canola, dry beans, dry peas, mustard, rapeseed, soybeans in states as determined by the Deputy Administrator, or sunflowers were grown the preceding crop year.

(e) Hemp that has a THC level above 0.3 percent:

(1) Is not eligible for NAP benefits; and

(2) Is not included in the producer's actual yield for the purpose of determining a producer's APH under § 1437.101.

(f) Hemp will be ineligible for NAP payment for that NAP crop year if the producer's certification or license is terminated or suspended during that NAP crop year.

Subpart D—Determining Coverage Using Value

§ 1437.301 [Amended]

14. In § 1437.301, remove paragraph (d).

Subpart E—Determining Coverage of Forage Intended for Animal Consumption

15. Amend § 1437.401 as follows:

a. In paragraph (f)(2), remove the word “conditions” and add the words “conditions, or by alternative methods as determined by the Deputy Administrator” in its place; and

b. Add paragraph (g).

The addition reads as follows:

§ 1437.401 Forage.

* * * * *

(g) For those NAP covered participants who seek to have a NAP payment determined based on paragraph (f)(2) of this section, a notice of loss under § 1437.11 will not be required; only an application for payment must be filed. Unless otherwise expressed by the NAP covered participant, FSA will presume the participant to want assistance for grazed forage determined according to paragraph (f)(2) of this section.

Subpart F—Determining Coverage in the Tropical Region

§ 1437.502 [Amended]

16. Amend § 1437.502 as follows:

- a. In paragraph (b), remove “December 1” and add “December 31” in its place.
- b. In paragraph (c), remove the words “per county per crop year, a maximum service fee of \$250” and add the words “the maximum service fee per crop per county provided at § 1437.7” in their place.

§ 1437.503 [Amended]

17. In § 1437.503(a), remove the words “crops, other than in Hawaii, Puerto Rico, and other areas approved by the Deputy Administrator, except as approved by the Deputy Administrator in special cases” and add the word “crops” in their place.

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